

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Marquis Aurbach Coffing

Brian R. Hardy, Esq.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
bhardy@maclaw.com

Jonathan O'Brien, NYB No. 5043369
(Pending Admission Pro Hac Vice)
Law Office of Jonathan O'Brien
Telephone: (646) 308-1689
43 W. 43rd St, Suite 002
New York, NY 10036
Jobrien@burnsobrienlaw.com

Attorneys for Plaintiffs William Clark and Gabrielle Clark

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GABRIELLE CLARK,
individually and as parent and
guardian of WILLIAM CLARK
and WILLIAM CLARK,
individually,

Plaintiffs

STATE PUBLIC CHARTER SCHOOL
AUTHORITY, DEMOCRACY PREP
PUBLIC SCHOOLS, DEMOCRACY PREP
PUBLIC SCHOOLS, INC., DEMOCRACY
PREP at the AGASSI CAMPUS,
DEMOCRACY PREP NEVADA LLC,
SCHOOL BOARD of Democracy Prep at
the Agassi Campus, NATASHA TRIVERS
individually and in her official capacity as
Superintendent and CEO, ADAM
JOHNSON, individually and in his official
capacity as Executive Director and
Principal, KATHRYN BASS individually
and in her capacity as Teacher, JOSEPH
MORGAN, individually and in his official
capacity as Board Chair, KIMBERLY
WALL individually and in her capacity as
assistant superintendent, and John & Jane
Does 1-20

Defendants.

Case Number:
2:20-cv-02324-RFB-VCF

**EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION AND
APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

1 Plaintiffs, Gabrielle and William Clark (collectively “Plaintiffs”) by and through their
 2 attorneys of record herein, hereby submit their Emergency¹ Motion for Preliminary Injunction
 3 and Application for Temporary Restraining Order. This Motion and Application are made and
 4 based upon the papers and pleadings on file herein, the following Memorandum of Points and
 5 Authorities, and any oral argument allowed at the time of hearing.

6 MEMORANDUM OF POINTS AND AUTHORITIES

7 I. INTRODUCTION

8 William Clark (“William”) seeks to have his failing grade for the “Sociology of
 9 Change” class removed. Defendants alter, inflate and misrepresent their grading, attendance
 10 and curriculum as it suits them for various purposes. This is demonstrated in teacher
 11 declarations and documentary evidence attached hereto and to the Complaint. If Defendants
 12 can contort their irregular grading practices for their own purposes, they can do so for William.

13 Defendants coercive identity confession and labeling exercises are unlawful, ongoing
 14 and should be enjoined and declared harassment, a hostile environment and unconstitutional.
 15 Defendants compelled speech and retaliated against William, violating the First Amendment
 16 to the Constitution of the United States, 42 U.S.C. §§ 1983, the Equal Protection Clause, Title
 17 VI of the Civil Rights Act and Title IX. Defendants actions are not in the public interest, which
 18 is why they endeavor to disguise it, and would substantially and irreparably harm Plaintiffs if
 19 left unchecked. Plaintiffs will prevail on the merits of this matter, and the injury faced by
 20 Plaintiffs is far greater than any possible injury that could be sustained by Defendants from
 21 the requested injunctive and declaratory relief.

23 ¹ Plaintiffs provided notice on the afternoon of January 14, 2020, to Wilmer Hale, Democracy Prep’s
 24 retained outside counsel by email that Plaintiffs would soon be seeking a temporary restraining order.
 25 Plaintiffs announced their intention to seek emergency and preliminary relief in the Complaint, filed
 26 while school was on holiday break. Plaintiffs contacted counsel for all Democracy Prep entities in an
 27 email on December 28, 2020 seeking resolution or compromise. Defendant’s responded that they were
 28 retaining outside counsel. Plaintiffs meet and conferred with the State Public Charter School
 Authority on January 8, 2020. Plaintiffs conferred with Democracy Prep outside counsel Wilmer Hale
 at length on January 11, 2021. Wilmer Hale agreed to accept service; however, to date, the Parties
 have been unable to reach any resolution. As such the instant motion and application are necessary.

1 **II. PARTIES**

2 William is in the 12th grade at Defendant Democracy Prep at Agassi Campus (DPAC),
3 and the son of Gabrielle Clark (“Gabrielle”). Defendant State Public Charter School Authority
4 (“SPCSA”) certifies, authorizes, screens and monitors DPAC, and recently renewed its
5 contract with Defendants DPAC, Democracy Prep Nevada LLC, and Democracy Prep at the
6 Agassi Campus School Board (“School Board”). SPCSA’s acquiescence and deliberate
7 indifference to DPAC’s discriminatory and unconstitutional acts amounts to practice and
8 custom with regards to the constitutional violations discussed herein. Defendant Democracy
9 Prep Public Schools (“DPPS”) is a public charter management organization and does business
10 in Nevada.

11 DPAC is a K-12 member school of the DPPS network in Clark County, Nevada.
12 Defendant Democracy Prep Public Schools, Inc. is the only managing member of Defendant
13 Democracy Prep Nevada LLC whose executive director is DPAC Principal Adam Johnson
14 (“Principal Johnson”). Defendant Democracy Prep Nevada LLC is a legal entity registered
15 under the laws of Nevada, and the contract between it and the SPCSA describes it as a separate
16 entity from the DPAC charter school itself.² The DPAC School Board is a unique entity with
17 final oversight of DPAC operations, curriculum and disciplinary matters. It is duty bound
18 according to its contract with SPCSA to ensure non-discrimination in accordance with Title
19 IX and VI and federal and state law.

20 Defendant Kathryn Bass (“Ms. Bass”) is a teacher and employee at DPAC. She teaches
21 the compulsory “Sociology of Change” class in which William was enrolled, and she required
22 William and his fellow students to reveal and make professions about their gender, sex,
23 religious and racial identities. She further subjected those professions to public interrogation,
24 scrutiny and derogatory labeling as part of a curriculum designed, promoted and implemented
25 by DPPS and its CEO and Superintendent Natasha Trivers (“Superintendent Trivers”).

26
27 ² <http://charterschools.nv.gov/uploadedFiles/CharterSchoolsnvgov/content/News/2020/200626-Democracy-Prep-at-Agassi-Contract-draft-5-21-20-clean.pdf>

1 Defendant Kimberly Wall (“Ms. Wall”) is assistant superintendent of DPPS in New
 2 York City. Defendant Joseph Morgan (“Mr. Morgan”) is Chair of the School Board at DPAC.
 3 All named Defendants are persons acting under color of state law within the meaning of 42
 4 U.S.C. § 1983.

5 **III. FACTS**

6 **A. DEFENDANTS’ IRREGULAR, SUBJECTIVE GRADING PRACTICES.**

7 But for Defendants’ intentional racial prejudice, William would not have received a
 8 failing grade for his “Sociology of Change” class. Plaintiffs support this with DPAC teacher
 9 and administrator testimony and business records which show the irregular and subjective
 10 nature of Defendants’ grading practices. Further, the evidence establishes the Defendants
 11 deliberately and routinely changed grades and coursework requirements to preserve the
 12 school’s enrollment-dependent tuition revenue and for other non-educational reasons.
 13 Moreover, Defendants stigmatized William with a grade that their own handbook says
 14 Defendants do not confer as a matter of official policy.³ Grade misrepresentation for public
 15 relations purposes and administrators’ personal agendas was compounded by the Defendants
 16 sudden altering of coursework, curriculum and credit requirements.⁴ All of this information
 17 was withheld from William.

18 **B. DEFENDANTS’ UNSAFE, RACIALLY HOSTILE ENVIRONMENT.**

19 Gabrielle told DPAC and DPPS in a mid-November meeting “You put a bullseye on
 20 my son’s back.”⁵ Ms. Clark’s fear was reasonable,⁶ and compounded by DPPS’ and DPAC’s
 21 financial mismanagement, which has caused school facilities to fall into a state of disrepair
 22
 23

24 ³ See ECF No. 1 ¶ 17

25 ⁴ *Id.*

26 ⁵ See ECF No. 1 ¶ 3

27 ⁶ See ECF No. 1 ¶ 54

1 and led to neglect and inadequate supervision of students.⁷ The school is understaffed, the
 2 older and experienced teachers were terminated in order to reduce salary costs⁸ and DPPS and
 3 DPAC policies enforced by Principal Johnson and Superintendent Trivers discouraged police
 4 response and investigations into reported incidents at DPAC on subjective ideological
 5 grounds.⁹ In fact, a young student died on campus while State mandated monitoring
 6 procedures failed to be observed.¹⁰ This situation persists and aggravates the hostile
 7 environment deliberately created and tolerated by Defendants.

8 **C. DEFENDANTS MANDATORY IDENTITY CONFESSION**
 9 **EXERCISES AND STEREOTYPE HARASSMENT**

10 At the start of his final school year, William began the year-long “Sociology of
 11 Change” class required for all DPAC seniors and taught by teacher Ms. Bass. The class runs
 12 in tandem with another project-based class, “Change the World,” in which students carry out
 13 a political or social work project under the guidance of Ms. Bass and with input from other
 14 students.¹¹

15 After Plaintiffs objected in early September to the coercive and ideological nature of
 16 the “Sociology of Change” class, Principal Johnson informed Gabrielle that the theoretical
 17 basis of the revamped “Sociology of Change” course is known as “intersectionality,” and is
 18 inspired by political activist, academic and “Critical Race Theory” proponent Kimberlé
 19 Crenshaw.¹² William’s first graded assignment for the class required him to reveal his racial,

20
 21
 22 ⁷ Bentheim ¶ 11, 23; Tishkowitz ¶ 5-8

23 ⁸ *Id.*

24 ⁹ Bentheim Declaration, ¶ 14; Tishkowitz Dec, ¶

25 ¹⁰ Tishkowitz Declaration, ¶ 6; Bentheim Declaration, ¶ 13

26 ¹¹ See ECF No. 1, Exhibit D.

27 ¹² Defendants would later deny in a meeting with Gabrielle that the class was infused with “Critical
 28 Race Theory.”

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1 sexual, gender, sexual orientation, disabilities and religious identities. William was required
2 to submit his identities “if any” in a homework assignment due by September 21, 2020.

3 “Hello my wonderful social justice warriors!” Defendant Ms. Bass greeted William
4 and his classmates on or about September 8, 2020.¹³ Ms. Bass then requested each student to
5 “label and identify” their gender, racial and religious identities as part of “an independent
6 reflection” exercise which was graded. The next step was to determine if “that part of your
7 identity have privilege or oppression attached to it.”¹⁴ Privilege was defined as “the inherent
8 belief in the inferiority of the oppressed group.”¹⁵ Ms. Bass’s material stated who qualified as
9 oppressors, and who in virtue of their gender and race harbored “inherent belief in the
10 inferiority” of others.¹⁶ As a result, Ms. Bass explicitly assigned moral attributes to pupils
11 based on their race, gender, sexual orientation and religion. William did not wish to profess
12 his identities on command in a non-private setting. William felt that if he had submitted to the
13 terms of this exercise, he would have been in effect adopting and making public affirmations
14 about his racial, sexual, gender identities and religious background that he believed to be false
15 and which violated his moral convictions.

16 A “vocab reminder” visual graphic from the same class instructed participants that
17 “oppression” is “malicious or unjust treatment or exercise of power.”¹⁷ The lesson categorized
18 certain racial and religious identities as inherently “oppressive,” singling these identities out
19 in bold text, and instructed pupils including William who fell into these categories to accept
20 the label “oppressor” regardless of whether they disagreed with the pejorative characterization
21 of their heritage, convictions and identities. The familial, racial, sexual, and religious identities
22

23 ¹³ See ECF No.1, Exhibit A at Pg. 30.

24 ¹⁴ *Id.* at Pg. 11.

25 ¹⁵ *Id.* at Pg. 2.

26 ¹⁶ *Id.*

27 ¹⁷ *Id.* at Pg. 23.

1 that were officially singled out and characterized as “oppressive” were predetermined by
 2 Defendants’ class material from the outset, highlighted as such in bold text, antecedent to any
 3 discussion between student and teacher. William could not bring himself to accept or affirm
 4 these labels, which he conscientiously believed were calumny against his self-identity and his
 5 family.

6 After Defendant Ms. Bass directed William and his peers to “label and identify” their
 7 various identities, and place them in the designated “oppressive” categories, the next step was
 8 to “breakout” into groups to discuss with other pupils, asking and answering accusatory
 9 personal questions, including “Were you surprised with the amount of privilege or oppression
 10 that you have attached to your identities” and “How did this activity make you feel.”¹⁸ Those
 11 students who did not “feel comfortable or safe enough to do so,” were permitted to refrain
 12 from divulging the information to other students in their group. The pre-set structure of the
 13 class ensured that any pupil of a certain perceived race, gender or sex who declined to
 14 participate would highlight one’s status as an “oppressor” who harbored inherent “privilege.”
 15 Pupils remained visible to one another in the virtual classroom. Defendants’ class presentation
 16 also stated that denial of these identity characterizations amounts to unjust privilege
 17 “expressed as denial.”¹⁹

18 The official, derogatory labeling included in the DPPS/DPAC curriculum
 19 programming was not only based upon invidious racial distinctions, but also upon religious,
 20 sexual, and gender discrimination. In addition to the “white” racial identity, Defendants
 21 singled and assigned inherent moral attributes to pupils who fell into male, heterosexual
 22 gender/sex identities and Christian religious categories. Calling such identities intrinsically
 23 oppressive, the materials defining “oppression” as “malicious or unjust” and “wrong.”²⁰
 24

25 ¹⁸ *Id.* at Pg. 22.

26 ¹⁹ *Id.* at Pg. 2.

27 ²⁰ *Id.* at Pg. 11.

1 William was compelled to participate in public professions of his racial, religious, sexual, and
 2 gender identities, and would be labeled as an “oppressor” on these bases by Defendants.
 3 William was obliged to profess himself complicit in “internalized privilege [which] included
 4 acceptance of a belief in the inherent inferiority of the [corresponding] oppressed group” as
 5 well as supporting “the inherent superiority or normalcy of one’s own privileged group.” As
 6 a male, William’s identities were “malicious and unjust” and “wrong” whether or not he was
 7 conscious of these alleged facts, and whether or not he was personally responsible for any acts
 8 or omissions²¹. William’s female teacher instructed him that only members of the male sex
 9 were capable of committing “real life interpersonal oppression”, because “interpersonal
 10 sexism is what men do to women”²².

11 William and his mixed-race family belong to many of the groups characterized as
 12 “oppressive” and “wrong” by Defendants. The assignment of these derogatory labels based
 13 upon racial, sexual, gender identities and religious upbringing created a hostile environment
 14 for William, who for instance was raised according to Judeo-Christian precepts and traditions
 15 by his mother. Defendants’ curriculum programming and Ms. Bass’ actions labeled
 16 Christianity as an example of an oppressive ideology and institution against which students
 17 should “fight back” and “unlearn.”²³. The material makes explicit the “unlearning” is to take
 18 place in class, at the direction of the teacher. In fact, one slide that William was exposed to
 19 states “We have a lot of unlearning to do.”²⁴.

20 Professing one’s racial, sexual and religious identities on command, and exposing
 21 those professions to the scrutiny of others, was a regular and official practice of the
 22 DPPS/DPAC “Sociology of Change” curriculum programming, which William was required
 23

24 ²¹ *Id.*

25 ²² *Id.* at Pg. 9.

26 ²³ *Id.* at Pg. 33

27 ²⁴ *Id.* at Pg. 35

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1 to perform repeatedly, and not just in the beginning classes. The terms of this practice were
 2 authored by DPPS, as DPAC and DPPS “On the Google Doc write down your individual
 3 identity,” Defendant Ms. Bass directed William and his classmates in one virtual online
 4 session.²⁵ “Fill out your identities again,” she reiterated. Individual identities to be written
 5 down and submitted for grading included:

6 Race/Ethnicity/Nationality: _____
 7 Gender: _____
 8 Socioeconomic Status: _____
 9 Disabilities: _____
 10 Religion: _____
 11 Age: _____
 12 Language: _____ [Id.] [Clark Complaint. ¶ 35]

13 The above assignment was graded and the assignment sheet included an asterisked
 14 caveat at the end: “This list is private! No one else will see it.” The assurance proved to be
 15 false, however, because the entry of identities was required to be submitted to the teacher,
 16 which she could see and muse over; and although students like William were not informed of
 17 the fact, by entering their intimate personal information onto the student assignment Google
 18 Doc database, it immediately became visible to all DPAC teachers and administrators and
 19 remains so to this day, in contravention of the written privacy assurance Defendants gave to
 20 William and his fellow students, as Plaintiffs and counsel were later informed by Defendants.

21 Defendants conceded in meetings with Plaintiffs in mid-November and again in early
 22 December with counsel that required exercises and graded homework assignments involving
 23 identity confessions as described above occurred and was encouraged. Defendants refused to
 24 assure Plaintiffs that graded identity confession assignments or in class exercises would not
 25 occur again in future “Sociology of Change” and “Change the World” classes that William is
 26 required to attend for graduation. Defendants’ current position is that they will not expunge

27 _____
 28 ²⁵ *Id.* at Pg. 34.

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1 the failing grade they gave William or allow him to take an alternative class but that he may
2 partially repair his grade for last trimester's "Sociology of Change" class if he completes all
3 the assignments, which would still not be full credit. [Clark Complaint. ¶ 37]

4 Defendants' curriculum made attacks against the integrity of William and his mother's
5 family relationships. Families "reinforce racist / homophobic prejudices,"²⁶. William's
6 deceased father was white, and he died when William was too young to know him. The
7 DPPS/DPAC teacher presentation material purports to supply substantial information as to
8 what sort of man he was, however, and what sort of relationship he had with William's black
9 mother. "Interpersonal racism is what white people do to people of color close up," one
10 "Sociology of Change" curriculum slide declares, with examples including "beatings and
11 harrasments."²⁷ Defendants do admit that not all white people may be guilty of individually
12 performing such acts, but because white people belong to a "dominant group," invidious
13 distinctions are justified: "Some people in the dominant group are not consciously
14 oppressive...Does this make it OK? No!"²⁸.

15 With green eyes and blondish hair, William is generally regarded as white by his peers,
16 and despite having a black mother, is so light skinned that he is usually presumed "white" by
17 all others. He is the only apparent white boy in his class, in fact, and is regularly reminded of
18 it. Still, the DPPS/DPAC "Sociology of Change" curriculum programming which William
19 had to submit to says not to worry.²⁹

24 ²⁶ *Id.* at Pg. 36.

25 ²⁷ *Id.* at Pg. 9.

26 ²⁸ *Id.* at Pg. 10.

27 ²⁹ *Id.* at Pgs. 8, 24.

1 One of William's first "Sociology of Change" sessions at DPAC on or about
2 September 10, 2020 erupted into racially charged tumult, and Ms. Bass terminated discussion
3 when students, including William, objected to her derogatory, race-based labeling. Her
4 actions both intimidated him from speaking out in class further and was an official
5 endorsement of an ideology regarding intimate personal matters that he could not in
6 conscience affirm. Gabrielle immediately complained about its disorder and intimidation to
7 Principal Johnson. In a meeting with Plaintiffs Defendants would neither confirm nor deny
8 whether they generated a report regarding the incident. This initial online incident and sitting
9 through classes described above traumatized William, discouraged and chilled his speech. His
10 mother also did not want him to participate further, and appealed to Defendants repeatedly,
11 complaining specifically of the coercive identity revelations and the subsequent hostile
12 environment Defendants were fostering. [Clark Complaint. ¶ 41]

13 **D. ACCOMMODATION SOUGHT; RETALIATION GIVEN**

14 Defendants informed William that he must return to and complete the "Sociology of
15 Change" class, or he would not be permitted to graduate from high school. Plaintiffs spoke
16 with school officials on multiple occasions from September 2020 to the present to express
17 their conscientious objection class' required identity exercises and assert their rights to abstain
18 from participating in class sessions and assignments that were coercive, invasive and
19 discriminatory. But the response from increasingly higher levels DPAC and DPPS officials
20 was the same: if you don't participate in the class' sessions, you don't graduate. [Clark
21 Complaint. ¶ 42]

22 In a signed letter dated September 17, 2020, Principal Johnson wrote to Gabrielle that
23 "[a]fter reviewing the documents from Ms. Bass, the course syllabus, and hearing your
24 concerns, I have determined that the Sociology of Change course is still a valuable learning
25 experience for William (and his classmates) and will continue to be a required course for
26
27
28

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1 graduation.”³⁰. [Clark Complaint. ¶ 46] Again, on October 12, 2020, Principal Johnson sent
2 an email to Gabrielle in response to her and William’s complaints about the discriminatory
3 identity labeling, stating “I know you have disagreements with some of the information shared
4 in the Sociology of Change course, however, as I mentioned the course is required for
5 graduation.” On the same day Gabrielle responded “William will not be attending Sociology
6 of Change. The class violates his civil rights. Retaliation with threats to his graduating is also
7 a violation of his civil rights. If you’d like to discuss an alternative to this class, I am available
8 anytime.” [Clark Complaint. ¶ 47]

9 On October 19, 2020, Principal Johnson moderated his position. He wrote that William
10 could not go and not do the assigned work if he chooses, and fail and be ineligible for
11 graduation. Or he could complete a “minimum” of the exercises and assignments, and then
12 receive a grade of a C minus, the school’s lowest passing grade, which might disqualify him
13 from being considered for admission to his preferred colleges of NYU and Berkeley School
14 of Music, but at least it would not technically count as a failing grade. Or William could
15 participate fully in the “Sociology of Change” class, pass with flying colors and face no grade
16 penalization. These offers forced Plaintiffs to choose between fidelity to conscience and their
17 right to a public education. [Clark Complaint. ¶ 49]

18 The refusal of any reasonable accommodation to William’s conscientious objection
19 contradicts explicit public statements by DPPS and Superintendent Trivers, who both have
20 encouraged students “to use their voice to stand up for what is right, even if that means pushing
21 back against a school policy, occupying a cafeteria, or staging a walkout” in online posts on
22 March 30, 2020 from the school’s corporate and Superintendent Triver’s personal
23 Twitter.com social media accounts, and in staff training materials annexed to this motion.³¹
24 [Clark Complaint. ¶ 52] Offering no reasonable accommodation, Defendants followed
25

26 ³⁰ See ECF No. 1, Exhibit E.

27 ³¹ Bentheim Declaration, ¶ 18
28

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1 through on their threats of retaliation and gave William a D minus for the “Sociology of
2 Change” class, which according to DPPS official policy is a failing grade. The assignment of
3 a D- grade for the “Sociology of Change” class taught and graded by Ms. Bass is a
4 contravention of DPAC’s official school handbook. According to the DPAC handbook,
5 “Democracy Prep does not give Ds. We are aware that the lowest grade most colleges and
6 universities will accept for entry is a C-. Because our mission is to send every DPPS scholar
7 to the best colleges and universities, we align our grading practices with these standards.”³²
8 [Clark Complaint. ¶ 53]

9 As a high school senior, William is now at work on his applications for colleges. He
10 has to submit his grades as part of this process. He also is plying away at his other DPAC
11 classes, despite the fear and loss of trust of in school officials resulting from this ordeal.
12 William has suffered severe mental and emotional distress as a result of Defendants’ actions
13 and the hostile environment created by their official actions, all of which has negatively
14 impacted his academic performance, personal relationships and future professional and
15 academic prospects. He is currently receiving psychiatric therapy addressing these harms as
16 well as the ongoing harassment and discrimination that is being inflicted on him by
17 Defendants under the guise of “civics.” William is at present living in fear of Defendants and
18 reasonably anticipates further retaliation. His fears have been confirmed. Upon information
19 and belief Defendants again blatantly retaliated against Plaintiffs and suspended William on
20 December 16, 2020, falsely accusing him of “racism” to preempt any further self-assertion
21 from Plaintiffs. [Clark Complaint. ¶ 54]

22 Gabrielle is also personally suffering from the shock, anxiety, and guilt associated with
23 having entrusted her son to adult custodians who have set upon “unlearning” the Judeo-
24 Christian values she imparted to her son, and from exposing him to derogatory labeling and
25 discrimination and retaliation on the basis of his perceived race, sexuality and gender. She has
26

27 ³² See ECF No. 1, Exhibit C.

1 suffered severe emotional distress as a result and is now suffering regular heart palpitations,
 2 weight gain and insomnia. She has watched helplessly as Defendants doubled down again
 3 and again on their coercive and inconsistent policy towards her son, threatening his graduation
 4 and academic and professional future. [Clark Complaint. ¶ 55]

5 **E. RACISM AS BUSINESS MODEL**

6 Defendant DPAC is in a precarious financial situation that is aggravated by its charter
 7 management organization, DPPS. DPPS appears to be drawing public funds allocated by the
 8 State of Nevada to DPAC and removing those funds to the New York City-based management
 9 organization.³³ The only recent year when DPAC and DPPS were not running a deficit appears
 10 to have been 2020 because of the millions of dollars in forgivable small business loans
 11 DPAC/DPAC applied for under the federal Payroll Protection Program of the CARES Act and
 12 received, exploiting a loophole in COVID-19 relief measures. DPAC/DPPS appear to
 13 contradict their public claims to be entirely funded by public charter school tuition funds.³⁴

14 **IV. LEGAL STANDARD**

15 A plaintiff may seek injunctive relief against unconstitutional conduct and policy.
 16 Concerning unconstitutional conduct that violates speech, the Ninth Circuit put the four-part
 17 test this way: (1) the plaintiff is likely to succeed on the merits; (2) he is likely to suffer
 18 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his
 19 favor; and (4) an injunction is in the public interest. *Associated Press v. Otter*, 682 F.3d 821,
 20 823-24 (9th Cir. 2012).

21 Temporary restraining orders may be granted, pursuant to Rule 65(b) of the Federal
 22 Rules of Civil Procedure. The remedy is available under such conditions only if immediate
 23 and irreparable injury would result if a hearing were to be held and if the applicant certifies to
 24 the court the efforts made to give notice to the other party.

26 ³³ Bentheim Declaration, ¶ 7-9

27 ³⁴ See ECF No. 1 at ¶ 23

1 **V. ARGUMENT**2 **A. FREE SPEECH & REMEDYING RETALIATION**

3 William requests injunctive relief ordering Defendants to expunge the grade they
4 conferred upon him in retaliation for his protected behavior for resisting their coercive,
5 invasive and discriminatory curricular assignments and classroom sessions.

6 William will succeed on the merits of his First Amendment challenge. That
7 Defendants repeatedly compelled his protected speech is minutely documented in the
8 Complaint which is verified and affirmed in the declaration William.³⁵ That Defendant's
9 identity confession and labeling exercises are ongoing has been conceded by Defendants
10 themselves, and documented as a policy set in motion at the administrative level. That said, a
11 petitioner in a First Amendment case must make a showing as to all four factors and the test
12 does not simply "collapse into the merits" in First Amendment cases. *Thalheimer v. City of*
13 *San Diego*, 645 F.3d 1109, 1128 (9th Cir.2011).

14 "The loss of First Amendment freedoms, for even minimal periods of time,
15 unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).
16 William will continue to suffer irreparable harm absent an injunction ordering Defendants to
17 remove the failing grade they conferred on him. The failing grade contravened Defendants'
18 own official grading policy and was racially motivated retaliation for protected behavior and
19 stands out on his report card as a stigma as he applies to colleges.³⁶

20 The balance of hardships weighs in Plaintiffs' favor. Defendants alter grades and
21 coursework requirements routinely and as it suits them³⁷ and so they should do so now to
22 remedy a constitutional injustice. The injunction sought by complainant is narrow: William
23 asks that a single grade be expunged, without any further delay.

24
25 ³⁵ See ECF No. 1; William Clark Declaration

26 ³⁶ See ECF No. 1 at ¶ 17

27 ³⁷ Tishkowitz Dec, ¶ 9; Bentheim Dec ¶ 20-22

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1 Lastly, public interest is served by upholding William's First Amendment rights. The
2 inquiry into the public interest factor is largely "subsumed within [the] analysis of likelihood
3 of success on the merits, irreparable injury, and balance of hardships." *Sanders County*, 698
4 F.3d at 749. "Courts considering requests for preliminary injunctions have consistently
5 recognized the significant public interest in upholding First Amendment
6 principles." *Thalheimer*, 645 F.3d at 1129 (quoting *Sammartano v. First Judicial Dist.*
7 *Court*, 303 F.3d 959, 974 (9th Cir.2002)). Public interest favors preliminary injunction
8 enjoining the state from punishing school age students for resisting class programming that
9 compels speech and violates conscience.

10 Plaintiff carrying the punishment of a failing civics grade in his senior year chills
11 speech and preserves a fear based, hostile environment which is not the status quo that the
12 court should preserve pending trial. Neither is Defendants' current remedial offer that he go
13 back and submit to their unlawful coursework, and be subjected to their racist PowerPoint
14 slides again, and still be penalized for loss of credit for class participation and attendance.³⁸

15 School students "do not shed their constitutional rights to freedom of speech or
16 expression at the schoolhouse gate." *Tinker v. DesMoines* (1968). A preliminary injunction
17 preserves that First Amendment right, and also serves the public interest. *See Cox v. McLean*,
18 49 F. Supp. 3d 765, 773 (D. Mont. 2014). The public interest is in preserving First Amendment
19 freedoms. The public interest favors William.

20 Courts have previously intervened in the face of such blatant, selective policy
21 exclusions. In *Carey v. Brown*, 447 U.S. 455, 100 S.Ct. 2286, 65 L.Ed.2d 263 (1980), the
22 Supreme Court struck down a statute that generally prohibited picketing of residences and
23 dwellings, but exempted "the peaceful picketing of a place of employment involved in a labor
24 dispute." *Id.* at 457, 100 S.Ct. 2286. The statute plainly "accorded preferential treatment to
25 the expression of views on one particular subject; information about labor disputes may be
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1 freely disseminated, but discussion of all other issues is restricted.” *Id.* at 461, 100 S.Ct. 2286;
 2 *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 98–99, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972)

3 **B. COMPELLED SPEECH AS INVASION OF THE INTELLECT AND** 4 **SPIRIT**

5 “An allegation of future injury may suffice if the threatened injury is ‘certainly
 6 impending,’ or there is a ‘substantial risk that the harm will occur.’” *Clapper v. Amnesty*
 7 *Intern. USA*, 568 U.S. 398, 437 (2014). Plaintiffs respectfully request that Defendants be
 8 enjoined from conducting identity confession and labeling exercises, whether William is
 9 required to actively participate in them or not. Ms. Wall told plaintiff’s counsel that
 10 Defendants would not forswear the practice going forward, nor assure that William would
 11 not be subjected to the practice in his “Change the World” workshop class or elsewhere, and
 12 a week later Defendants counsel in writing stated William would not be required to actively
 13 participate in professing and labeling his identities if they were to happen in his “Change the
 14 World” class, or in another class.³⁹

15 The above “concessions” are obtuse and illusory, as they still expose Plaintiff to a
 16 racially hostile environment, and is anyway temporary litigation posture meant to revert to
 17 prior policy. Plaintiffs thus request declaratory relief in the form of an order stating that it is
 18 unconstitutional compelled speech for Defendants to direct school age students to divulge
 19 sexual, gender, racial and religious identities and disabilities “if any” in a classroom only to
 20 have those identities normatively and pejoratively labeled. A public school’s discretion to
 21 select its curriculum is not unfettered and “is circumscribed by the proscriptions of the First
 22 Amendment.” *See Lee v. Weisman*, 505 U.S. 577, 587 (1992); *see also C.f. Santa Fe Indep.*
 23 *Sch. Dist. v. Doe*, 530 U.S. 290, 301 (2000) (holding that school policy of permitting student-
 24 led, student-initiated prayer at football games served no legitimate state interest violated the
 25 First Amendment). In *Weissman*, a public-school student and her father brought suit seeking
 26 permanent injunction to prevent inclusion of invocations and benedictions in graduation

27 ³⁹ *See* ECF No. 1 at ¶ 51

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1 ceremonies of city public schools. The United States District Court for the District of Rhode
2 Island granted relief, which the Supreme Court ultimately affirmed. *Id.* Additionally, courts
3 have found that prayer rituals in elementary and secondary schools, which resemble
4 Defendants serial identity confession exercises, carry a particular risk of indirect coercion.
5 *Engel v. Vitale*, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601; *School Dist. Abington v.*
6 *Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844.

7 With regard to required civic pledges in elementary schools, there of course is the
8 *Barnette* decision where the Supreme Court struck down a school regulation that mandated
9 students salute the flag and recite the Pledge of Allegiance on threat of suspension. *West*
10 *Virginia State Board of Education v. Barnette*, 319 U.S. 624. As in *Barnette*, Defendants
11 endeavor to place intimate, personal matters “within the vicissitudes of political controversy,”
12 albeit in a more extreme and divisive fashion, applying discriminatory stereotyped labels to
13 the identities professed on command by individual school age pupils. Defendants’ current
14 position, that William simply stands by while others oblige the teachers’ demands to recite
15 their identities for labeling is unavailing. In *Weissman*, the Court found that by coercing
16 student to stand and remain silent during giving of prayer, even though student was not
17 required to join in message could meditate on own religion or let mind wander. *Id.*

18 Also in *Weissman*, the Court held that the State may not place the student dissenter in
19 the dilemma of participating or protesting. The Court held that since adolescents are often
20 susceptible to peer pressure, especially in matters of social convention, the State may no more
21 use social pressure to enforce orthodoxy than it may use direct means. “The embarrassment
22 and intrusion of the religious exercise cannot be refuted by arguing that the prayers are of a
23 de minimis character, since that is an affront to the rabbi and those for whom the prayers have
24 meaning, and since any intrusion was both real and a violation of the objectors' rights.” *Id.*

25 There are heightened concerns with protecting freedom of conscience from coercive
26 pressure in the elementary and secondary public schools. In *Edwards v. Aguillard*, 482 U.S.
27 578, 584, 107 S.Ct. 2573, 96 L.Ed.2d 510 (1987) the Court held that sources of this coercive
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1 power are “mandatory attendance, ... students' emulation of teachers as role models, and the
2 children's susceptibility to peer pressure”). In William’s case, attendance was mandatory.
3 Active and full participation in identity professions and labeling was also mandatory and
4 repeated, as Principal Johnson stated in his September 17, 2020 Letter, and again in his email.
5 Labeling identities as “oppressor” or privileged” was both verbal, as in *Barnette*, and written.
6 *See eg Frudden v. Pilling*, 742 F.3d 1199, 1204 (9th Cir. 2014) (holding “written expression”
7 of school uniform logo compelled speech and violated students’ First Amendment rights).

8 Even the “emulation of teachers” is vividly exhibited in William’s case. Peer pressure
9 was present, and stoked to a frenzy by Defendants, as it was officially encouraged, and even
10 goaded as it involved intimate matters of race, sex and gender among adolescents.⁴⁰ By merely
11 being present but not participating, William was forced to suffer humiliation and alienation,
12 feelings made more acute by his conspicuously different racial appearance,⁴¹ and these
13 feelings Defendants meant to engender in order to work in participants and non-participants
14 alike as a sort of pain cure. Indeed, in a OneTilt slide, “discomfort” is identified as a
15 psychological status to be deliberately instilled in the participants.⁴² Such premeditated
16 discomfort and induced feelings of shame and alienation are not avoidable by simply not
17 participating, which again is Defendants’ current remedial offer, and it is one reason why
18 William requests injunctive and declaratory relief.

19 C. HOSTILE ENVIRONMENT AND EQUAL PROTECTION

20 In *Barnette*, the Court remarked that the Pledge of Allegiance as a political ritual was
21 not diminished by the First Amendment’s right of children to refuse to participate, since so
22 many do voluntarily take the pledge. The Court also acknowledged the pledge’s utility in
23 instilling solidarity and a sense of common purpose. *Barnette*, 319 US 64 (1964). However
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25 ⁴⁰ *See* ECF No. 1 ¶ 42

26 ⁴¹ *See* ECF No. 1 ¶ 41

27 ⁴² Bentheim Dec, Ex 3

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1 here, as evidenced by the resistance to the school endorsed stereotypes and labeling by
2 William and some of his fellows, it is more likely than not that Defendant's exercises would
3 be diminished if they were not mandatory; that is to say, if students could avoid it, few would
4 consent to the serial exercise of revealing and labeling racial, sexual and gender identities.⁴³

5 William did try to avoid it. One reason, he did so is that the racial composition of his
6 family is complex and sensitive, and not easily slotted into rough, pre-ordained categories that
7 are untrue to the Clarks' lived experience. William recoiled from the exercises that trafficked
8 in racial, sexual and gender stereotypes which objectively created a hostile environment in
9 violation of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the
10 14th Amendment. A federal court generally has broad discretion regarding an injunction
11 pursuant to Title VI ordering the halt of unconstitutional conduct or mandating that specific
12 actions be taken to effectuate or implement redress for individuals harmed by the
13 unconstitutional conduct. *See eg Smith v. Young Men's Christian Ass'n of Montgomery, Inc.*,
14 462 F.2d 634, 636, 643 (5th Cir. 1972).

15 Plaintiffs are likely to prevail on the merits. Defendant's specific practice of endorsing
16 racial stereotypes and programming mandatory identity labeling violate Title VI of the Civil
17 Rights Act of 1964, create a hostile environment and should be enjoined. Plaintiffs' also
18 request declaratory relief, since Defendants' stated repeatedly they intend to continue
19 practicing the exercises on school students, even with William in the classroom, or down the
20 hall.⁴⁴ Racial harassment need not be directed at the complainant in order to create a hostile
21 educational environment. 59 Fed.Reg. 11449-50. The urgency of the problem is compounded
22 by the school being unsafe, understaffed, intentionally unpoliced, and racially hostile
23 generally.

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27 ⁴⁴ See ECF No. 1 at ¶ 51,52

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1 Under 42 U.S.C. § 2000d, “[n]o person...shall, on the ground of race, color, or national
2 origin, be excluded from participation in, be denied the benefits of, or be subjected to
3 discrimination under any program or activity receiving Federal financial assistance.” *Id.* To
4 state a claim for a violation of this section, a plaintiff must plead “(1) the entity involved is
5 engaging in racial discrimination; and (2) the entity involved is receiving federal financial
6 assistance.” *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994).

7 Defendants receive federal funds. These Defendants designed and implement a
8 curriculum program that orchestrates racial harassment and is designed to treat students
9 disparately, instilling discomfort in some but not others, according to their race and color.
10 Courts have found such exercises can create hostile environments. *Underwood v. Northport*
11 *Health Servs., Inc.*, 57 F. Supp. 2d 1289, 1303 (M.D. Ala. 1999) (finding “baseless accusations
12 of racism” made against employee are racial harassment that contributes to a racially hostile
13 work environment in violation of the 1964 Civil Rights Act.)

14 The Department of Education defines a “racially hostile environment” as one in which
15 racial harassment is “severe, pervasive or persistent so as to interfere with or limit the ability
16 of an individual to participate in or benefit from the services, activities or privileges provided
17 by the recipient.” Racial animus is credibly and specifically attributed to individual
18 Defendants in the teacher declarations annexed hereto. The declarations also specifically
19 described instances where Defendants’ personal racial prejudices are magnified into school
20 policy and introduced into curriculum.⁴⁵

21 Defendant’s curriculum programming interferes with William’s ability to participate
22 in and benefit from his public education. He could not tolerate the class, because it was racist.
23 He had to leave the class, so Defendants punished him. Defendants obtusely kept telling him
24 to take it on the chin and go back to the class. Plaintiff’s poor performance in the class was
25 the result of the racial hostility and harassment baked into it, and this affected Plaintiff
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27 ⁴⁵ Bentheim Dec, ¶ 4,17,18; Tishkowitz ¶ 10.

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1 disparately on account of his generally perceived race and color. Defendants further retaliated
2 against him with a grade their handbook says they do not offer as a matter of policy, and this
3 was racially motivated retaliation.

4 In order, to state a claim for retaliation, a plaintiff must show: “(1) that she engaged in
5 protected activity”; (2) that she suffered “a material adverse action”; and (3) “that a causal
6 connection existed between the protected activity and the adverse action.” *Peters v. Jenney*,
7 327 F.3d 307, 320 (4th Cir. 2003). The failing grade is an act of retaliation by Principal
8 Johnson and all individual Defendants and should be imputed to the DPAC School Board who
9 was included in and over saw the ordeal for months. The overall grade also included specific
10 deductions for particular unlawful exercises that William refused to complete.⁴⁶ As an anti-
11 retaliation measure, the grade should be expunged and William afforded the opportunity to
12 earn the missed credits with another class or project.

13 Since Defendant’s apply derogatory labels to some racial, sexual, and gender
14 identities, but not to others, their mandatory exercises are per se discriminatory and their
15 pedagogical or civic utility is prima facie dubious. Plaintiffs are mindful that the heightened
16 concern regarding coercing school students is balanced to a great degree by the broad
17 discretion of a school board to select its public-school curriculum. *Epperson v. Arkansas*, 393
18 U.S. 97, 104, 89 S.Ct. 266, 21 L.Ed.2d 228 (1968). The Supreme Court has emphasized,
19 though, that courts should inject themselves in a controversy regarding the daily operation of
20 a school system if basic constitutional values are “directly and sharply implicate[d].” *Id.* at
21 104–05, 89 S.Ct. 266 (1963); see also *California Parents for Equalization of Educ. Materials*
22 *v. Noonan*, 600 F. Supp. 2d 1088, 1116 (E.D. Cal. 2009).

23 A School Board’s “broad discretion” in selecting its curriculum is vitiated further by
24 the fact that Defendants do not actually have a board of directors in any meaningful sense.
25 Defendant’s coercive, racist “civics” programming was prepared in New York City with the
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27 ⁴⁶ See ECF No. 1 at ¶ 29

1 help of well-paid, for-profit contractors and then placed in the hands of teachers around the
2 country, including DPAC in Nevada. These teachers are described by Defendants as “public
3 employees.” Defendant School Board and SPCSA were deliberately indifferent to these
4 developments.

5 Even if the curriculum programming at issue was examined, deliberated upon and
6 approved by a fully staffed, independent and deliberative school board, it “directly and sharply
7 implicated” constitutional rights, namely it discriminated, harassed and compelled protected
8 speech, while serving no legitimate state interest. *See Fisher v. Fairbanks North Star Borough*
9 *School Dist.*, 704 P.2d 213, 217, 27 Ed. Law Rep. 329 (Alaska 1985) (stating that while school
10 board's authority over classroom materials is “very broad,” board may not design curriculum
11 to impose racial bias or political preference).

12 **D. TITLE IX HOSTILE ENVIRONMENT AND STEREOTYPE** 13 **HARASSMENT**

14 Title VI is the model for several subsequent statutes that prohibit discrimination on
15 other grounds in federally assisted programs or activities, including Title IX (discrimination
16 in education programs prohibited on the basis of sex). *See U.S. Department of Transportation*
17 *v. Paralyzed Veterans*, 477 U.S. 597, 600 n.4 (1986). Accordingly, courts have “relied on case
18 law interpreting Title VI as generally applicable to later statutes.” *Id.*

19 William will prevail on the merits for his Title IX claims. Defendants applied their
20 coercive curriculum programming to sex and gender just as they did to race and color. William
21 would have been consenting to the “oppressor” and “privilege” in professing his sexuality,
22 and Defendants stereotyped and made baseless accusations of sexism: “interpersonal sexism
23 is what men do to women.”⁴⁷ Defendants applied pejorative moral attributes to individual
24 students on the basis of sex and gender, just as they did with race, and created a coercive
25 program in which students were compelled to confess their complicity for these inherent
26 failings.

27 ⁴⁷ See ECF No. 1 at ¶ 33.

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1 Defendants solicit and label students' sexual and gender identities. Determining and
2 coming to terms with gender identity, especially for adolescents, is an intimate, confusing and
3 profoundly fraught negotiation with one's inner self. Defendants' curriculum cheapens that
4 intimate process, requiring students to "Label and identify!" gender for "10 points."⁴⁸
5 Perpetuating such a program is not in the public interest because it is cruel, and serves no
6 legitimate state purpose.

7 Just as was the case with race and color, some genders and sexualities fared better than
8 others in Defendants' exercises. To William's male sexual identity Defendants applied an
9 "oppressor" label, and William was instructed and required to assign this label to himself. So
10 to with "privilege," which again Defendants define prescriptively. As was the case with race,
11 certain character failings were only present in one sex and gender, but in another:
12 "interpersonal sexism is what men do to women" Defendants carrying on with such a program
13 is not a status quo that should be preserved. Courts have found that sex stereotyping--that is,
14 a person's nonconformity to social or other expectations of that person's gender--constitutes
15 impermissible sex discrimination with respect to Title VII. "In the specific context of sex
16 stereotyping, an employer who acts on the basis of a [stereotyped gender belief] . . . has acted
17 on the basis of gender." *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250, 109 S. Ct. 1775,
18 1790-91, 104 L. Ed. 2d 268 (1989). In the instant educational environment, Defendants acted
19 on gender and sex stereotypes, serially applying them to students including William, and then
20 took further action by grading the ordeals.

21 Further promotion and implementation of such coercive exercises should be enjoined
22 as it expresses hostility in an educational environment that William still inhabits. Plaintiffs
23 respectfully request that the official application of normative sex and race stereotypes like
24 "privileged" and "oppressor" onto individual students and the required identity exercises as
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27 ⁴⁸ See ECF No. 1 at ¶ 29
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1 applied to race, gender, and sex be declared sexual and racial harassment, promotive of a
2 hostile environment, and violations of Title VI and IX.

3 **VI. CONCLUSION**

4 Plaintiffs respectfully request an emergency preliminary order directing Defendants to
5 expunge the failing first Trimester “Sociology of Change” grade and to accommodate William
6 Clark by permitting him to enroll in another class or project. For an order that Principal
7 Johnson, as he did last November, personally deliver to Plaintiffs the report card, corrected
8 and scrubbed of stigma. For a temporary restraining order, preliminary and permanent
9 injunction, enjoining and restraining Defendants its officials, agents, employees, and all
10 persons acting in concert or participating with them are prohibited from conducting coercive,
11 graded identity confession and labeling exercises and such exercises declared harassment, a
12 hostile environment and unconstitutional as well as a declaration that Defendants compelled
13 speech and retaliated against William, violating the First Amendment to the Constitution of
14 the United States, 42 U.S.C. §§ 1983, the Equal Protection Clause, Title VI of the Civil Rights
15 Act and Title IX.

16 Dated this 15th day of January, 2021.

18 MARQUIS AURBACH COFFING

20 By /s/Brian R. Hardy
21 Brian R. Hardy, Esq.
22 Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145

23 Jonathan O’Brien, NYB No. 5043369
24 (Pending Admission Pro Hac Vice)
25 Law Office of Jonathan O’Brien
43 W. 43rd St, Suite 002
New York, NY 10036

26 *Attorneys for Plaintiffs William Clark and*
27 *Gabrielle Clark*

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of January, 2021, I served a copy of the foregoing
EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY
RESTRAINING ORDER upon each of the parties by depositing a copy of the same in a
sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully
prepaid, and addressed to:

State Public Charter School Authority
2080 E. Flamingo Rd. Suite 230
Las Vegas, NV, 89119
Rebecca.Feiden@spcsa.nv.gov
Rherrick@spcsa.nv.gov
Attorney for Defendant SPCSA

Alan E. Schoenfeld | WilmerHale
7 World Trade Center
250 Greenwich Street
New York, NY 10007 USA
+1 212 937 7294 (t)
+1 212 230 8888 (f)
alan.schoenfeld@wilmerhale.com
Attorneys for Democracy Prep Defendants

and that there is a regular communication by mail between the place of mailing and the
place(s) so addressed.

/s/J. Case
an employee of Marquis Aurbach Coffing

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816